

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 71 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE NAGARI MILLS CO.LTD.

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR with MJ PARIKH for Petitioner

MR SR DIVETIA ADDL.PP for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/04/97

ORAL JUDGEMENT

M/s. Nagari Mills Company Limited has preferred

the present revision application against the order passed by the learned Metropolitan Magistrate, Court No. 8, Ahmedabad on 31st December, 1985 in Summary Case No. 9061 of 1980.

2. The Municipal Commissioner of Ahmedabad Municipal Corporation had served a notice under Section 166-A of the Bombay Provincial Municipal Corporations Act, 1949 on the present petitioner on 3rd October, 1979 by alleging therein that though the petitioner-Mills was allowed to discharge domestic and trade effluent into the municipal drainage, the drainage pipeline of the petitioner mills were overflowing and effluent water was being discharged resulting into creating unhygienic conditions and there was also likelihood of explosion of the said drainage line of the mills and consequently to construct the said drainage line properly. After the service of the said notice, the mills took a stand that the suggestion given by the officers of the Municipal Corporation were neither practical nor possible and they are accordingly informed vide its reply dated 10th October, 1979. Thereafter, the Municipal Corporation lodged a complaint against the present revision applicant and on considering the evidence led before him, the learned Magistrate came to the conclusion that the present revision applicant had committed breach of the notice issued under Section 166-A and was, therefore, guilty of offence alleged against the revision applicant, and accordingly, held applicant guilty and sentenced to pay fine of Rs. 100/=.

3. Being felt aggrieved by the said contention, the revision applicant has come before this Court. It is vehemently urged before me by Mr. Parikh, the learned advocate on behalf of the revision applicant that the notice issued by the Municipal Corporation on 3rd October, 1979 is not complying with the mandatory requirement of Section 166-A of the Bombay Provincial Municipal Corporations Act, 1949. He contended before me that the notice does not mention as to what material as well as well as size and description the drainage was to be constructed. In order to consider this submission of Mr. Parekh, it is necessary to consider the provisions of Section 166-A of the Bombay Provincial Municipal Corporation Act, 1949. The said Section 166-A is running as under :-

"166A. (1) Notwithstanding anything contained in this Act or the rules or by-laws or any usage, custom or agreement, where in the opinion of the Commissioner any trade premises are without

sufficient means of effectual drainage of trade effluent or the drains thereof, though otherwise unobjectionable are not adapted to the general drainage system of the City, the Commissioner may by written notice require the owner or occupier of such premises -

- (a) to discharge the trade effluent from the premises in such manner, at such times, through such drains and subject to such conditions as may be specified in the notice and to cease to discharge the trade effluent otherwise than in accordance with the notice;
- (b) to purify the trade effluent before its discharge into a municipal drain, and to set up for purifying the trade effluent such appliances, apparatus, fittings and plant as may be specified in the notice;
- (c) to construct a drain of such material size and description and laid at such level and according to such alignment and with such fall and outlet as may be specified in the notice;
- (d) to alter, amend, repair or renovate any purification plant, existing drains, apparatus, plant-fitting or article, used in connection with any municipal or private drain."

4. After considering the above provisions of Section 166-A, it is also necessary to consider the contents of the notice issued on 3rd October, 1979. The said notice is running as under :-

"To
The Manager
The Nagri Mills
Rajpur-Gomtipur
AHMEDABAD

Sub :- Effluent discharge into
Municipal Sewers.

Sir,

The premises used by the Nagri Mills (hereinafter referred to as the factory) were allowed to discharge the domestic and trade effluents into the Municipal drains.

Since some time it is observed that the sewers in the localities in the vicinity of your factory are overflowing. In my opinion the trade effluent discharged by your factory is responsible for this. due to this overflowing of drains the environment becomes unhygienic and the extra hydraulic load may also result in the bursting of the sewers.

Therefore, under Section 166-A of the Bombay Provincial Municipal Corporation Act, I hereby give you notice that :

- (1) You are required to arrange the discharge of your trade effluent in such a manner that the effluent does not flow into the Municipal sewer between 6 and 11 A.M.
- (2) You are required to install a flow measuring device at such a place that it should measure only the total industrial waste water discharged from the factory. It should be before the waste water equalization tank mentioned at 3 below. The said flow measuring device should be such that it should be able to indicate the quantity of flow at any given time and also should be able to indicate the integrated flow.
- (3) You are required to construct an equalization tank with a minimum storage capacity equal to 8 hours waste water discharge from the factory, within your factory premises, if necessary by constructing a storage tank, specially for the purpose, or by repairing or renovating or altering such appliances, apparatus, fittings of plants which may be already existing. It should be constructed to ensure that the waste water from different sections of the factory should first enter should flow into the waste water treatment plant.
- (4) You are also required to provide a valve

between the final reservoir of your waste treatment plant and the municipal manhole, within your premises.

If you fail to comply with this notice

within 30 days from the date of service, my scientists will visit your factory premises after the notice period is over, and if the arrangement are found to be inadequate and the effluent still found to be flowing into the Municipal sewers during the time specified in this notice a criminal complaint under section 392 (1)(b) and also under section 392 (2)(b) of Bombay Provincial Municipal Corporation Act will be filed against you, and also for every day during which the default continues and your discharge of trade effluent into the Municipal drain will be discontinued.

Yours faithfully,

Sd/=

Municipal Commissioner"

If the contents of the above notice are considered then it would be quite clear that in para 1 to 4 of the said notice, the Municipal Corporation has given all the necessary details and measures to be taken by the petitioner in order to avoid the overflowing of the effluent and thereby creating unhygienic conditions. If the reply given by the petitioner to the said notice is taken into consideration then it would be quite clear that for the reasons stated by the Mills in the said reply, the revision applicant-mills was of the view that the directions given by them were neither practical nor possible. It is very pertinent to note that it is not the claim of the revision applicant in the said reply, which is produced on record, that the said directions given by the municipal corporation were contrary to the provisions of rule 166-A. This Court has taken a view that if the notice issued by the Municipal Corporation could not be said to be contrary to the provisions of Section 166-A than non-compliance of the said notice would amount to commission of offence. The learned counsel for the revision applicant Mr. Parekh has cited before me the case of Manager, Dhalbhum Estate v. Overseer, Jugsalai Notified Area Committee, reported in AIR 1937 Patna 224. In this case cited by him under Section 359 of Bihar and Orissa Municipal Act, there is a provision of sub-section 2 and that provision of sub-section 2 further provides that if the person on whom the notice is served fails to carry out the drainage

works, as directed in the said notice, then the municipal authority was competent to enter into the land and construct the said drainage and to recovery the said amount from the person on whom the notice was served and that condition or provision of Section 359 was not complied in the said notice. In that case, it has been held by the Single Judge of the Patna High Court that the notice was illegal and the consequences of the prosecution were illegal. But the provisions of Section 166-A are considered then it would be quite clear that there is no such provision under Section 166-A as was available in sub-section 2 of Section 359 of the Bihar Act. I, therefore, hold that the said authority is not applicable to the facts before me.

5. I am unable to hold that the notice served on the present revision applicant was either illegal or improper. I do not find any illegality committed by the learned Metropolitan Magistrate in holding in the revision applicant guilty of the offence for which the revision applicant was prosecuted. In my view, the order of conviction and sentence passed by the learned Metropolitan Magistrate is required to be up-held by dismissing the present revision application.

6. I accordingly dismiss the present revision application. The order passed by the learned Metropolitan Magistrate is confirmed. Revision applicant is hereby dismissed. Rule discharged.

Prakash*